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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service	)	CC Docket No. 98-91

COMMENTS OF COVAD COMMUNICATIONS COMPANY

Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell (collectively "SBC") have brazenly asked this Commission to embark on a reckless and ambitious program of "relief from regulation" with regard to asymmetrical digital subscriber line ("ADSL") service.[1] The SBC Petition comes only one week prior to Pacific Bell filing a wide-ranging tariff with the FCC Competitive Pricing Division to offer ADSL Service in eighty-seven central offices in California.[2] Either SBC expects significant problems in getting its ADSL Service tariff through the Commission—and has therefore begun this proceeding to badger the Commission about that process—or SBC is seeking regulatory "cover" to explain to consumers and the information technology industry its failure to roll-out these services to date. As described in these comments,

[1] Petition of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell for Relief from Regulation, CC Docket No. 98-111 (filed June 9, 1998) ("SBC Petition"). This petition is the fourth in a series of petitions filed by other Regional Bell Operating Companies ("RBOCs"), including Bell Atlantic, Ameritech and U S WEST. Petition of Bell Atlantic for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-11, at 3 (filed Jan. 26, 1998); Petition of U S WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26 at 4 (filed Feb. 25, 1998); Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability, CC Docket No. 98-32 at 2-4, 14-27 (filed March 5, 1998).

[2] Pacific Bell Telephone Company, Pacific Tariff F.C.C. No. 128, Transmittal No. 1986, June 15, 1998 ("Pacific ADSL Tariff").

what really stands in the way of advanced, broadband DSL services to the homes of Americans in SBC's region is not regulation but the actions of SBC itself against CLECs.

I. INTRODUCTION

Covad Communications Company ("Covad") supports the policy manifest in Section 706 of the 1996 Act. Indeed, Covad's sole goal is to make the vision of Section 706 a reality by making advanced telecommunications services available to homes, businesses, schools and libraries throughout the United States by deploying Digital Subscriber Line ("DSL") technology over the existing local facilities of incumbent LECs. Unlike the endless "trials" engaged in by ILECs, Covad has actually deployed DSL services in a commercial setting in California and is actively building DSL networks in Seattle, Boston, Washington, DC, and New York City. Covad's current network passes over 1.2 million homes and businesses in the State of California and should double in the next few months, unless it is unreasonably hampered by SBC and other ILECs.

Covad believes that no "regulatory deals" should be cut with SBC for broadband services until SBC demonstrates that it has faithfully and fully implemented the relevant provisions of the 1996 Act that would permit CLECs like Covad to widely offer broadband telecommunications services on a competitive basis. Sections 251, 252, 271 and 272 remain the law of the land and they have not been fully implemented.[3] As described below, Covad's experience with SBC regarding physical collocation and actual

[3] In this regard, Covad notes SBC's troubling request that the Commission essentially preempt enforcement of Section 252(i) rights that CLECs have. SBC Petition at 33-34. Taking this action would legitimize blatant discrimination—CLECs lucky enough to already have a comprehensive resale agreement with an SBC LEC would have the ability to resell ADSL service but other CLECs would be denied similar terms.

provisioning of DSL-compatible unbundled loops demonstrates SBC's failure to comply with the 1996 Act, especially as it relates to broadband services.[4]

Section 706 is not simply about forbearance or "regulatory relief"—it is a clarion call for more competition in telecommunications markets.[5] In its Comments on the Bell Atlantic, Ameritech and U S WEST 706 Petitions, Covad outlined several specific steps that would greatly enhance the deployment of advanced telecommunications services in a competitive environment. These steps include immediate Commission action to: (1) ensure actual, nondiscriminatory access to unbundled local loops that support xDSL services (and relevant OSS) at just and reasonable rates, terms and conditions; (2) require reform of ILEC physical collocation practices; and (3) remove all artificial restrictions on the functionality of equipment that may be collocated in ILEC central offices.[6] More recently, ALTS filed a Petition under Section 706, and Covad strongly supports the relief sought in that petition.[7] Covad believes that if the Commission takes these measures, competitive providers of advanced services will emerge in all parts of the country.

The SBC Petition presents a unique opportunity for the Commission to examine *actual market conditions* regarding the deployment of DSL services. Indeed, SBC cites these conditions as evidence that forbearance is appropriate, claiming that consumers may "simply move" to another provider like Covad "if they become dissatisfied with the

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[4] For example, SBC's physical collocation practices violate the plain language of section 251(c)(6): SBC unilaterally declare that many central offices lack space for physical collocation without first obtaining a "determination" from the California State Public Utility Commission that no space is available.

[5] Covad takes no position as to whether Section 706(a) of the 1996 Act presents a legal mandate or authority for regulatory forbearance in addition to Section 10 of the Act. However, if Section 706(a) is a legal mandate or source of authority for "regulatory forbearance", it must also be a legal mandate or source of authority for the Commission to implement "measures that promote competition in the local telecommunications market" and to accelerate advanced services deployment "by promoting competition . . . . " 47 U.S.C. § 157nt(a)-(b).

[6] Comments of Covad Communications Company, CC Docket Nos. 98-11, 98-26, 98-32, filed April 6, 1998. Covad requests that these comments be incorporated into the record of this proceeding.

[7] Petition of the Association for Local Telecommunications Services (ALTS) for a Declaratory Ruling, CC Docket No. 98-78 (filed May 27, 1998).

ADSL service provided by an SBC LEC."[8] Indeed, SBC's conduct with regard to Covad in California presents an interesting real world "case study" in the various obstacles that CLECs face in providing these services. In fact, SBC has done the Commission and the public a service—it has invited scrutiny of the status of DSL competition in California. As the largest DSL CLEC in California, Covad is glad to take SBC up on that offer.

II. REGULATORY POSTURING MEETS THE REAL WORLD: BEING A "DSL CLEC" IN CALIFORNIA

The SBC Petition makes it look like being a "DSL CLEC" in California is easy.[9] Indeed, the process looks so simple on paper—obtain collocation and then use a state of the art OSS to order and obtain unbundled DSL-capable loops—that one wonders why SBC has not engaged in a similar strategy out-of-region. In practice, SBC (and other ILECs) has opportunity after opportunity to throw barrels in front of charging CLECs like Covad. And SBC has never passed up an opportunity to toss a barrel.

A. SBC Maintains Anticompetitive Physical Collocation Practices

Interestingly, SBC spends only one paragraph in its forty-page filing talking about physical collocation,[10] even though the cost of physical collocation (up to $100,000 per central office in California) is the single highest entry cost a DSL CLEC faces. Like a crazy relative in the attic, SBC would probably like to keep its physical collocation record as far out-of-sight as possible.

SBC's collocation record in California with Covad is abysmal—Covad has asked for collocation in 165 central offices, and SBC has unilaterally declared that "no space" exists in no less than *fifty* of those offices. Nearly *one third* of the California consumers

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[8] SBC Petition at 32; *see also id.* at 11-17 (describing alternative providers); 31 (discussing that "actual" and "potential" competitors exist). Therefore, actions taken by SBC that limit the geographic scope and growth of competitors like Covad,and SBC practices that affect the ease in switching DSL providers (*i.e.*, "to simply move", SBC Petition at 32) are highly relevant to this proceeding.

[9] SBC Petition at 17-21 (describing how CLECs obtain access to ADSL-capable loops and collocation).

Covad is trying to reach are being unilaterally and unlawfully denied competition from Covad, and presumably other CLECs.

Space exists in these offices for DSL equipment. Indeed, SBC admitted as much in its recent ADSL Service tariff filing—the tariff lists 87 offices in which SBC will provide ADSL Service.[11] Yet in 20 of those 87 offices, SBC maintained that "no space" existed for collocation of Covad's DSL equipment. That is, while SBC has found space in those twenty offices for its own DSL equipment, it denied space in those offices to Covad and presumably other CLECs.[12] This conduct is discriminatory and has hindered the deployment of advanced services to California consumers.

SBC's actions are also unlawful. Section 251(c)(6) requires that SBC obtain a "determination" from the California Public Utilities Commission ("CPUC") that space for physical collocation does not exist before it denies Covad physical collocation.[13] The same SBC that seeks to justify "relief from regulation" unilaterally rejects collocation applications out of hand, without seeking the required determination from the CPUC.

Even where space is available, SBC's collocation practices delay entry. The process of collocating in California is laborious. Purportedly to satisfy "security" concerns, CLECs are required to pay for the construction of an expensive (up to $100,000) 10'x10' cage infrastructure in the CO. SBC gives itself 30 days simply to respond to a collocation space request and then gives itself at least 120 days (sometimes more) to install the cage. Only after the cage is compete does SBC permit Covad to order transport to the office to make its DSL equipment usable, which takes a minimum of an

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[10] SBC Petition at 20-21.
[11] Pacific ADSL Tariff at Section 17.5.4.
[12] Deployment of ADSL service requires placement of "DSLAMs" in the central office that are not already placed in those offices. Therefore, when SBC provides ADSL service, it must find a rack, cabling and power in the central office to place this DSLAM and related equipment.
[13] 47 U.S.C. § 251(c)(6).

additional 19 business days to connect. Even with these leisurely deadlines, SBC's performance is atrocious—to date, 60% of Covad's cages due before June 1, 1998 have been delivered substantially late, with many delays stretching into weeks and even months.[14]

This lazy performance should be contrasted with SBC's aggressive plans to roll out ADSL Service in California—thirty-eight offices on July 1, an additional thirty-eight offices only one month later, and an additional eleven offices by the end of the year.[15]

Covad has proposed cage-less physical collocation—a nondiscriminatory type of physical collocation offered to Covad and other CLECs by U S WEST Communications, Inc.—to solve these space, expense and time problems, and SBC has refused. As Covad discussed in the Bell Atlantic, Ameritech and U S WEST 706 dockets, cage-less physical collocation would provide an efficient form of physical collocation in *all* central offices at considerably lower prices (well less than $10,000 per office, compared to up to $100,000 for a cage). As Commissioner Tristani recently observed, by dramatically reducing the cost of entry, cage-less physical collocation could open the door to the competitive provision of advanced, DSL services to residential and rural Americans.[16]

Because of SBC's plain failure to comply with the law, its complete intransigence in resolving these significant collocation issues, and its utter failure even to provide cage-based physical collocation in a timely manner, Covad has filed a private antitrust lawsuit against Pacific Bell in U.S. District Court in California. Last week, Covad filed a Motion for Preliminary Injunction in that proceeding, asking for immediate injunctive relief to

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[14] *See* Exhibit 1, Regan Dec.
[15] Pacific ADSL Tariff at Section 17.5.4.
[16] Remarks of Commissioner Gloria Tristani before the U S WEST Regional Oversight Committee, April 27, 1998, at http://www.fcc.gov/Speeches/Tristani/spgt807.html.

resolve these issues. A copy of this Motion, and supporting documentation, is attached to these Comments as Exhibit 1.

B. Availability of DSL-Capable Loops

SBC spends three pages describing its ADSL loop qualification procedures[17] but does not spend *any* time discussing its record in actually providing DSL-capable loops to Covad and other CLECs. Exhibit 1 (Rugo Dec.) describes that the loops provisioned by SBC in California are delivered late, do not work, or both, an astonishing 60% of the time. These failures present obvious customer dissatisfaction issues and require Covad to test these loops before it can notify customers that service is indeed available.

SBC's loop-qualification system is irrelevant if loops are not provided to CLECs promptly and in a nondiscriminatory manner, and the evidence reveals that SBC has engaged in discrimination in provisioning loops. For example, in February, 1998, Covad ordered—through the UNE ordering process—a local loop to provide DSL service to Lou Pelosi, Covad's director of marketing, and SBC informed Covad that no loops were available and that a loop could not be installed until July 31, 1998. At that point, Mr. Pelosi ordered, through Pacific Bell retail channels, Pacific ISDN service. That loop was installed in less than three weeks. Despite Covad's complaint about this discrimination, a loop was not provided to Covad for Mr. Pelosi until June 11, 1998, 129 days after Covad submitted the order.[18]

Additionally, CLECs do not direct have electronic access to SBC's loop qualification system, which clearly is OSS that must be offered as an unbundled element. As a result, CLECs do not have the ability to electronically access OSS and information clearly relevant for providing DSL services—such as length of the loop, presence of

[17] SBC Petition at 17-20.

analog load coils, location and number of bridge taps, and presence of Digital Loop Carrier systems on the loops, etc. At a minimum, complete implementation of OSS unbundling rules for SBC's "WebQual" system and spectrum management check is necessary, with commensurate reporting requirements to prevent discrimination with SBC's retail operations. An even more preferable option would be reporting requirements and complete structural separation between SBC's ADSL retail operations and the network group that performs these loop qualification and provisioning operations.

Finally, SBC's petition foreshadows a "spectrum management" process without providing any detail as to what levels or types of interference would disqualify a loop for DSL services. Indeed, SBC has also failed to provide these details to Covad in the day-to-day operations between the two companies. Before the FCC makes any decision, SBC should be forced to tell the world the basis under which it is planning to withhold loops from CLECs that wish to provide DSL services.

Until policy makers appropriately define and implement digital loop unbundling and OSS requirements—and then enforce the implementation of those requirements by ILECs such as SBC—CLECs essentially must "trust" ILECs to perform the loop qualification checks properly and in a nondiscriminatory manner. Exhibit 2 to these Comments contains a White Paper recently drafted by Covad to assist policy makers in understanding DSL technology and defining unbundled digital loops.

III. CONCLUSION

Consideration of SBC's actual conduct in California is necessary because the public interest, in light of Section 706, forbids the Commission from granting regulatory

[18] Exhibit 1, Pelosi Dec.

"favors" to companies that are deliberately preventing the deployment of advanced telecommunications services to Americans.

The Commission does not have to cajole or entice incumbent monopolies to deploy these services—deployment is happening, evidenced by the GTE ADSL tariff, the Pacific ADSL Service tariff, U S WEST's extensive DSL roll-out, Ameritech's ADSL offering in Michigan, and recent announcements by Bell Atlantic and BellSouth. The Commission's concern in Section 706 should be in creating an environment where ever-increasing high bandwidth services are deployed—the dynamic environment only competition and the presence of competitive rivals can provide.

Covad's experience in California should give pause to those who would claim that it is "easy" to provide DSL services as a facilities-based CLEC and that some commensurate form of "relief" for ILECs is now justified. The Commission must examine the SBC Petition for what it is—a offer to enter a Faustian "regulatory deal" with a company that is deliberately hindering the deployment of advanced services by competitors. The future of advanced telecom services should be determined in the rough and tumble of a competitive market—not through premature arrangements designed to entrench and extend monopolies.

Respectfully submitted,

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June 24, 1998

EXHIBIT 1

Covad Communications Company
CC Docket No. 98-91
June 24, 1998

COPY

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

COVAD COMMUNICATIONS COMPANY, a California corporation,

Plaintiff,

v.

PACIFIC BELL, a California corporation,

Defendant.

No. 98-1887-SI

FIRST AMENDED COMPLAINT FOR MONOPOLIZATION; ATTEMPTED MONOPOLIZATION; RESTRAINT OF TRADE; VIOLATION OF THE TELECOMMUNICATIONS ACT; MISREPRESENTATION; INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE; STATUTORY AND COMMON LAW UNFAIR COMPETITION

DEMAND FOR JURY TRIAL

Plaintiff Covad Communications Company ("Covad") complains in this action against defendant Pacific Bell ("Pacific") as follows:

NATURE OF THE CASE

1. This is an action for damages and injunctive relief arising out of Pacific's anticompetitive conduct in selected markets relating to the provision of local telecommunications services. In particular, this action involves the market for basic telecommunications transmission services that provide residential and small- and medium-sized business access to internet service providers ("ISPs"), and the market for basic telecommunications transmission services that provide access from employees' homes to corporate computer networks, all within Pacific's local service areas. These are two of the fastest growing and most critical segments of the telecommunications industry, and Pacific has willfully acquired, maintained and attempted to extend monopoly power in them through exclusionary and anticompetitive practices designed to injure competition in general, and Covad specifically. Pacific's conduct has reduced, and will continue to reduce, competition and consumer choice in these markets.

JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT

2. This is a civil action arising under the antitrust laws of the United States. This Court has subject matter jurisdiction over the claims relating to violation of Sections 1 and 2 of the Sherman Act pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 15.

3. This Court has pendent jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a) because all such claims originate from the same nucleus of operative facts as do the federal claims for violation of the Sherman Act.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b) in that defendant resides in and may be found in this District.

5. Assignment of this action to the San Francisco Division of this Court is proper because a substantial part of the events giving rise to the causes of action recited herein occurred in City and County of San Francisco, California.

THE PARTIES

6. Defendant Pacific is a California corporation with its principal place of business in San Francisco, California. Pacific is a wholly owned subsidiary of Pacific Telesis, which itself is a wholly owned subsidiary of SBC Corporation. As an incumbent local exchange carrier ("ILEC"), Pacific for many decades enjoyed a state-protected monopoly over the provision of basic local telecommunications transmission services (sometimes called local service, local exchange service and access service, and collectively referred to here as "local telecommunications services") to business and residential users within its incumbent service areas. Pacific is by far the largest provider of local telecommunications services in California. Pacific's local telecommunications service areas cover the vast majority of the State of California, and Pacific is the local telecommunications service provider to a vast majority of California residential and business users.

7. Pacific's monopoly over local telecommunications services is aided by its continuing control over the physical facilities that form the ubiquitous local telecommunications network. These physical facilities include approximately 16 million telephone lines to residential and business users (these telephone lines are often referred to as "local loops") in California, over 600 central offices (called "COs") where the residential and business telephone lines come together and where the ILECs' telecommunications equipment is located, and transmission facilities between COs and poles, conduits, ducts, rights of way, etc.

8. Plaintiff Covad is a California corporation with its principal place of business in Santa Clara, California. Founded on October 7, 1996, Covad is a growing start-up competitive local exchange carrier ("CLEC") focused on providing widespread high speed digital local telecommunications services to residential and business users over local telephone lines. Covad's local telecommunications services compete with local telecommunications services provided by Pacific.

9. As described in greater detail below, Covad provides its services by means of a combination of its own physical facilities and the purchase of discrete elements of Pacific's physical network and access to Pacific's COs under an "interconnection agreement" as well as applicable federal and state laws. Pacific is required under applicable law to, among other things, "unbundle" and lease discrete components of its physical network facilities to its competitors such as Covad. Under its interconnection agreement with Pacific and applicable law, Covad endeavors to lease CO space from Pacific (where Covad installs its own equipment) and also lease Pacific's telephone lines in order to provide Covad's own services over such physical facilities. Attached hereto as Exhibit A is a graphic representation of Covad's network configuration.

DESCRIPTION OF THE RELEVANT MARKET

10. Covad competes with Pacific in the market for local telecommunications transmission services for residential and small- and medium-sized business access to ISPs, within Pacific's local service areas (the "Local ISP Market"). Covad also competes with Pacific in the market for local telecommunications transmission services to connect individuals who work at home to their employer's internal computer network (e.g., telecommuters), within Pacific's local service areas (the "Local Telecommuter Market"). These markets are referred to here, collectively, as the "Local Telecommunications Markets."

11. Covad specializes in the provision of "dedicated" local telecommunications services. Covad's dedicated local telecommunications services connect two set points, provide high speed digital transmissions between such points, and are continually connected (meaning one does not need to dial up every time one wishes to utilize the service). Covad's dedicated services offer customers the advantage of paying a fixed flat, monthly fee, regardless of the amount of time they actually spend using the services. That makes dedicated services, as offered by Covad, ideal for remote connections to computer networks such as the Internet and corporate local area networks (LANs).

12. Covad markets its dedicated services primarily to ISPs to enable them to connect to their end user customers, and to medium- and large business customers to enable those companies' employees to connect with their employers' internal computer networks from remote sites. Covad's dedicated services offer users a better value -- always-connected, high speed digital transmissions, at a substantially lower and predictable flat monthly price -- than Pacific's competing services. Covad sells its local telecommunications services under the TeleSpeed[SM] brand name.

13. Currently, Pacific dominates the Local Telecommunications Markets through its sale of three services:

(a) First, Pacific sells basic, analog local telecommunications service (often called "plain old telecommunications service" or "POTS"). POTS service is provided by Pacific through the public switched telecommunications network ("PSTN"), which was originally designed to carry "switched" telecommunications transmissions (mainly voice calls) between the user's station and any other station connected to the PSTN. POTS service nevertheless allows users to set up dedicated connections between the user's location and a computer network by setting up a fixed "circuit" for telecommunications transmissions exchanged between the two. POTS service has for more than a decade been used and is today commonly and extensively used for setting up dedicated connections to computer networks from remote locations through the use of modems. With POTS service, users must "dial up" each time they connect to the network. Further, POTS service allows telecommunications transmissions only at relatively low speeds. In addition to a flat monthly fee, residential users also pay Pacific per-minute usage charges for POTS calls over a certain distance. Business customers pay Pacific per-minute usage charges for POTS calls for every minute of use as well as additional per-minute charges based on the distance of the call. Currently, the overwhelming majority of ISP connections to residences and small- and medium-size businesses and of corporate LAN connections to telecommuters' homes are via Pacific's POTS service.

(b) Second, Pacific sells Integrated Services Digital Network ("ISDN") service, a digital telecommunications service that Pacific provides using the same telephone lines and switching infrastructure as Pacific uses to provide its POTS service. ISDN service offers telecommunications transmissions at speeds several times faster than POTS, but substantially slower than most dedicated services. As with POTS service, users must dial anew each time they wish to use the service to connect to an ISP or a corporate computer network. In addition to a flat monthly fee, residential users also pay Pacific per-minute usage charges for ISDN calls over a certain distance or in excess of a certain amount of usage. Currently, a rapidly growing minority of ISP connections to residences and small- and medium-size businesses and of corporate LAN connections to telecommuters' homes are via Pacific's ISDN service. Pacific actively markets its ISDN service to ISP users (including through its own ISP), to medium and large business customers for their telecommuters, and to the user community generally.

(c) Third, Pacific sells its own dedicated services, including T1 (and fractional T1), 56 kilobit DDS, Frame Relay offerings and other similar services. Customers pay Pacific a flat monthly fee plus mileage-based fees, in some cases, for these dedicated services. Pacific actively markets its dedicated services to ISPs, their users, and to medium and large business customers for their telecommuter and other needs.

Pacific sells its switched ISDN and dedicated services that compete with Covad's local telecommunications services under the FasTrak[SM] brand name.

14. Covad's TeleSpeed services compete with Pacific's FasTrak and POTS services to meet the needs of the Local ISP Market and the Local Telecommuter Market. Pacific has an overwhelming share (in excess of 85%) of each of these Local Telecommunications Markets and wields monopoly power as to each of them. Pacific also controls the facilities used by Covad and other CLECs to provide service which compete with Pacific Bell's services in the Local Telecommunications Markets.

15. Demand for local telecommunications services -- including in the Local ISP Market and the Local Telecommuter Market -- is neither national nor statewide, but is extremely localized. At a minimum, the geographic region served by each CO constitutes a separate and independent relevant market. Pacific has monopoly power in each of those geographic markets in its service area.

THE NEED FOR ACCESS TO PACIFIC'S NETWORK

16. As the dominant or, in most cases, sole provider of local telecommunications facilities in its service areas, Pacific maintains overwhelming ownership, control and monopoly power in the market for COs, the market for transport (i.e., wires, equipment, and related facilities used to transfer telecommunications transmissions from one CO to another CO), and the market for local loops (i.e., wires, equipment and related facilities used to transfer telecommunications transmissions between a CO and an end-user premise, and wields monopoly power as to each of them as well.

17. Pacific's CO facilities are essential to Covad, and other competitors, because alternative facilities are not reasonably or practically available. Duplication of these physical facilities, even in a single greater metropolitan area, is a prohibitively costly and time-consuming task. Thus despite the efforts of some states some states, such as California, to explore ways to bring competition to local telecommunications service a decade ago, barriers to entry remain extremely high today.

18. Geographic coverage is extremely important to Covad's ability to provide service to the Local ISP and Telecommuter Markets. In order to market its services to corporations and ISPs, and their respective telecommuter and Internet access end users, Covad must be able to reach all those end users, no matter which CO within a given geographic area serves them. If Covad cannot provide that type of blanket coverage within a given geographic area, Covad's services will be much less attractive. Because Pacific has unreasonably and unnecessarily prevented Covad from locating and operating its telecommunications equipment in

many of Pacific's COs, Covad has been precluded from serving each of the end users connected to those COs. Pacific, by virtue of its monopoly over the local telecommunications facilities and network, provides ubiquitous coverage within its geographic service areas, and is able to promote and has promoted the desirability of that coverage to potential customers.

A. The Telecommunications Act of 1996

19. Pacific is no longer a state-sanctioned or protected telecommunications service monopolist. Among other developments, Congress in 1996 passed the Telecommunications Act of 1996, 47 U.S.C. §§ 251 et seq. (the "Act"), to promote competition in all telecommunications service markets. In particular, several provisions of the Act are intended to break up the monopoly hold of ILECs such as Pacific over local telecommunications services.

20. For example, the Act requires ILECs such as Pacific to offer CLECs access to their local telecommunications networks in three different ways:

(a) by providing connections to the ILECs' network, so that CLECs can complete calls ("interconnection");

(b) by selling (at the CLEC's choice) some or all of the individual network components and facilities that make up the local telecommunications network ("unbundled network elements" or "UNEs") to CLECs who wish to combine them (for example, with their own equipment or services) into alternative service offerings; and

(c) by selling at wholesale the local telecommunications service offerings the ILECs offer at retail, to those CLECs who wish to operate as resellers of those services in competition with the ILECs.

21. The Act permits CLECs to use any or all of the above three means, or any combination of them, to access the ILECs' networks and facilities. The Act also recognized that CLECs and ILECs need to enter into contracts governing the terms of their interactions, called

"interconnection agreements." Covad and Pacific entered into an interconnection agreement on April 21, 1997 (the "Agreement").

B. Collocation

22. CLECs who elect to compete with the ILECs by means of either interconnection or the purchase of unbundled network elements, as has Covad, must arrange to physically connect their network facilities with those of the ILEC. For CLECs such as Covad, this involves the placement of certain equipment on the premises of the ILEC's CO. The placement of CLEC equipment or CLEC-designated equipment on the premises of the ILEC's COs is known as "collocation." Without dependable, timely and affordable collocation, facilities-based CLECs (that is, those CLECs who own at least some of their own physical network facilities) cannot compete effectively with ILECs. Section 251(c)(6) of the Act explicitly requires ILECs to provide collocation on demand.

23. Physical collocation involves the placement of the CLEC's hardware equipment in a designated area within the ILEC's CO, in a manner in which the CLEC or its designated agents may gain access to the equipment in order to operate and perform maintenance, upgrades, and other service on the equipment.

24. The Act recognizes the importance of physical collocation. Both the Act, and the implementing regulations of the Federal Communications Commission ("FCC"), provide that ILECs have a duty to provide physical collocation unless the ILEC demonstrates to the satisfaction of the relevant state telecommunications regulatory authority that physical collocation is not practical for technical reasons or because of space limitations.

25. Where an ILEC has demonstrated that physical collocation is not practical for technical reasons or because of space limitations, or where a CLEC requests, the Act requires the ILEC to provide virtual collocation. Virtual collocation also involves the placement of CLEC-designated equipment in an ILEC's CO. But with virtual collocation, the equipment effectively becomes the property of the ILEC; the CLEC has no right to access, operate, maintain

or upgrade the collocated equipment. The ILEC, for a fee, operates and performs all maintenance, upgrades and other service required on the equipment. Thus, under virtual collocation, a CLEC must train its competitor how to operate and maintain the CLEC's equipment, entrust the operation and maintenance of that equipment to its competitor, reveal proprietary information regarding the equipment and its methods of operation and pay its competitor for the privilege. Virtual collocation strips the CLEC of direct control over the operation, maintenance, upgrade, and repair of its equipment, eliminates the CLECs ability to control the quality and timeliness of the services it delivers in these COs, and places the CLEC at a significant competitive disadvantage.

C. The Covad/Pacific Interconnection Agreement

26. Covad is a facilities-based CLEC, i.e., a CLEC that independently owns, operates and maintains some of its own telecommunications transmission and related facilities, instead of simply reselling the ILEC's telecommunications services. In order to offer meaningful, competitive local service in competition with Pacific, Covad needs -- and Pacific is required to provide -- access to a variety of Pacific's monopoly facilities, including certain unbundled network elements. As a result, Pacific and Covad entered into negotiations for an interconnection agreement pursuant to Section 252 of the Act, and they entered into the Agreement on April 21, 1997, to govern interconnection and collocation. By its terms, the Agreement is intended to "promote independent, facilities-based local exchange competition by encouraging the rapid and efficient interconnection of competing local exchange service networks" and to "accomplish interconnection in a technically and economically efficient manner in accordance with all requirements of the [Telecommunications] Act." Agreement at 1. The relevant provisions of the Agreement are attached as Exhibit B.

27. As part of the Agreement, Covad obtained the right to physically collocate its equipment in Pacific's COs and to purchase specific UNEs from Pacific, including unbundled local loops and unbundled dedicated transport. This configuration, if properly provided by

Pacific, would allow Covad to provide its local telecommunications services to meet the needs of the Local ISP Market and the Local Telecommuter Markets. (See Exhibit A).

28. Section 11 of the Agreement sets out the terms and conditions under which Pacific is to provide collocation to Covad. Among other important features, Section 11 provides that:

(a) Pacific agrees that it is bound by the FCC's collocation regulations;

(b) Pacific must provide collocation on a nondiscriminatory basis;

(c) Pacific must provide collocation in conformity with the terms, rates and conditions contained in Pacific' Schedule Cal. P.U.C. Tariff No. 175-T, Section 16 (the "CPUC Tariff"), as modified by the Agreement;

(d) Pacific may not reject any physical collocation request on the grounds that the equipment is unsuitable for collocation unless and until Pacific has proved to the California Public Utilities Commission (the "Commission" or "CPUC") that the equipment is not "necessary" within the meaning of the controlling FCC regulations; and

(e) Pacific may not reject any Covad physical collocation request in a Pacific CO on the grounds that space is unavailable unless and until Pacific has proved to the Commission that space in such CO is unavailable.

PACIFIC'S ANTICOMPETITIVE CONDUCT

29. Because Covad's recent market entry and service offerings pose a real threat to Pacific's monopoly power in the Local Internet Market and the Local Telecommuter Market, Pacific has engaged in a pattern of anticompetitive conduct generally designed to leverage Pacific's monopoly power obtained through its ubiquitous local telecommunications network into artificially enhanced market power in the Local Telecommunications Markets. Pacific has engaged in at least the following exclusionary and anticompetitive acts with the intent

and inevitable effect of injuring, thwarting or eliminating Covad as an actual or potential competitor:

Denial of Physical Collocation

30. Following the procedures set out in the Agreement, Covad has requested physical collocation at a number of COs in California, and continues to submit such requests on a regular basis to the present day. In order to sell its services effectively, and to serve its end users in its targeted markets, Covad requires access to unbundled network elements, and collocation, in many of Pacific's COs in California.

31. Pacific has arbitrarily and unilaterally denied Covad physical collocation at numerous COs within its local service territories, unilaterally declaring that no space is available for Covad to physically collocate its equipment in such COs. Yet Pacific consistently refuses to prove to the Commission that space for physical collocation is not reasonably available, in violation of both the Act and the parties' Agreement. Pacific also refuses to permit Covad to inspect the COs in which it claims no space is available.

32. At the same time it claims lack of space, Pacific has installed in the same COs its own new equipment that provides local telecommunications services to the Local Telecommunications Markets in direct competition with Covad's local telecommunications services. Pacific's actions constitute a breach of its duty to provide physical collocation in a non-discriminatory manner, and demonstrate that there is indeed physical space in those COs for Covad's equipment.

33. Moreover, Pacific has also affirmatively misrepresented to Covad the lack of availability of space and the lack of future availability of space in certain COs.

34. Further, Pacific has failed to comply with its obligation to provide CLECs with space in COs on a first-come, first-served basis, as required by law.

Insistence on Cages

35. Even where it has agreed to provide Covad with physical collocation, Pacific has hindered Covad's ability to provide competing services by insisting that Covad purchase what is known as a collocation "cage." A collocation cage is, literally, a metal cage-like barrier that separates the physical space allotted to the CLEC's equipment from the remainder of the CO. The prices charged by Pacific are extraordinary -- the price for a given cage may be anywhere from approximately $8,000 to upwards of $100,000. Covad has already paid Pacific approximately $1.6 million in collocation cage charges.

36. Pacific's insistence on caged physical collocation unnecessarily burdens CLECs in general, and Covad in particular. In addition to their expense, cages take a long time to build, thus adding significant delays to the CLEC's market entry, and cages waste space within the COs that would otherwise be available for physical collocation. Pacific does not experience this delay when it installs its own new equipment in its COs.

37. Pacific has maintained that there is no feasible alternative to caged physical collocation. Pacific's main justification for the cages is that they are necessary to maintain security, i.e., to prevent Covad personnel from gaining access to or tampering with Pacific's equipment. Pacific has also intimated at times that unspecified network and confidentiality concerns preclude physical collocation except via cages.

38. In fact, physical collocation can be accomplished without the use of cages, as demonstrated by the fact that another ILEC has agreed to provide CLECs cageless physical collocation in all of its states on terms that are much less expensive and permit collocation much faster. Covad developed and presented to Pacific a proposal for cageless physical collocation which would have permitted physical collocation in all of Pacific's central offices, while reasonably addressing both parties' security concerns. Covad's proposal requires less space than Pacific requires for caged physical collocation. Covad's proposal also imposes significantly lower costs on Pacific's CLEC competitors (such as Covad) than caged physical collocation. Despite these competitive benefits (or perhaps because of them), Pacific summarily rejected

Covad's proposal, insisting that Covad accept either caged physical collocation or virtual collocation.

39. Nothing in the Agreement, the Telecommunications Act of 1996, the FCC regulations thereunder or the CPUC Tariff requires the use of a cage for physical collocation. Pacific has no valid justification for requiring cages in light of its duty to provide physical collocation. Its insistence on the construction of a cage is unreasonable, unnecessarily restrictive, and anticompetitive.

Unexplained Delays, Asserted Lack of Facilities and Discrimination

40. Even in instances where Covad has been able to obtain caged physical collocation, Pacific has in a majority of instances imposed anticompetitive hindrances and delays designed to reduce the effectiveness of Covad as a competitor. Pacific has routinely failed to deliver a usable collocation cage within 120 days of Covad's request for physical collocation, as required by the Agreement. It has routinely failed to timely deliver numerous critical items required to be delivered with the cage, such as related power cables, power outlets, cage keys, ordinary telephone jacks, and equipment cabling.

41. In addition to its policy requiring cages, Pacific also restricts its provision of dedicated transport so as to hinder competitors such as Covad by increasing their time to market. Pacific prevents Covad from even ordering the unbundled dedicated transport lines that connect Covad's physical collocation spaces until after the caged collocation space is completed and ready. Pacific then routinely imposes additional and unreasonably lengthy delays before it provides the dedicated transport lines, times far in excess of the provisioning of similar transport to Pacific's own customers. This policy significantly delays Covad's ability to use even the collocation space Pacific does make available. After providing some dedicated transport lines, Pacific has failed to deliver additional lines for many months. Pacific has routinely missed its committed dates for delivery, and missed subsequent delivery dates, and then delivered lines that have required immediate repair. It has claimed lack of available facilities for Covad while

furnishing such facilities for its own retail customers. It has also claimed lack of facilities despite Covad's delivery of a forecast for such facilities as required by Pacific and despite Covad's offer to pre-order and pre-pay for such facilities well in advance in order to guarantee their availability to Covad. Pacific has rationed its transport facilities to its favored customers, and away from CLECs such as Covad.

42. Pacific has routinely failed to deliver timely and properly installed unbundled local loops, the telephone lines which connect end-user premises to Covad's equipment collocated in Pacific's COs. It has also rationed its loop facilities to its favored customers, and away from CLECs such as Covad. As a result, Pacific has forced Covad to wait months for loop deliveries.

Fear, Uncertainty and Doubt

43. Pacific has taken a variety of steps based on Pacific's overwhelming market power that were calculated to spread fear, uncertainty and doubt both within Covad and in the marketplace with regard to Covad. Among other items:

(a) Pacific has unilaterally and arbitrarily announced that all CLEC providers of DSL services must conform to DSL technology of Pacific's choice, which Pacific is currently testing. There is no technological reason why all CLECs must conform to the specific technology unilaterally chosen by Pacific and, indeed, ILECs in other regions have used and permitted the use of a variety of DSL technologies. Nonetheless, Pacific has communicated to its employees and to the marketplace that Covad may not provide its local telecommunications services because Covad's chosen DSL technology differs from Pacific's. These representations, at a minimum, increase Covad's costs of doing business and injure its reputation and goodwill.

(b) Pacific has unnecessarily restricted Covad's access to critical planning and implementation data, with the inevitable effect of raising Covad's costs, increasing Covad's internal management burdens, and heightening internal uncertainty within Covad.